

ATTORNEY GENERAL
GREGORY H. SMITH

THE STATE OF NEW HAMPSHIRE

83-91-I

DEPUTY ATTORNEY GENERAL
DEBORAH J. COOPER



ATTORNEYS
DANIEL J. MULLEN
JAMES D. CAHILL, III
RONALD F. RODGERS
JEFFREY R. HOWARD
G. DANA BISBEE
GREGORY W. SWOPE
PETER T. FOLEY
STEVEN M. HOURAN
EVE H. OYER
EDNA M. CONWAY
AMY L. IGNATIUS
ANDREW L. ISAAC
T. DAVID PLOURDE

THE ATTORNEY GENERAL

STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6397

July 21, 1983

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
JAMES E. TOWNSEND
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
PETER W. MOSSEAU
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
MARTHA V. GORDON
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT
ROBERT P. CHENEY, JR.
LESLIE J. LUDTKE

His Excellency, John H. Sununu
Governor of the State of New Hampshire
State House
Concord, New Hampshire 03301

Re: Establishment of a New Department of
Postsecondary Vocational-Technical Education

Your Excellency:

You have asked us to review legislation in the 1983 Session which provided for the reorganization of agencies or departments of state governments. This letter will identify the procedures which should be followed in implementing Chapter 379 of the Laws of 1983. Chapter 379, as enacted, repeals RSA 188-A and establishes a new Department of Postsecondary Vocational-Technical Education (hereinafter "department"). The responsibilities of the Department of Education and the State Board of Education under RSA 188-A are transferred to the new department. In ascertaining the proper procedures to be followed in this transfer of functions, it is necessary to determine when the transfer of operational and administrative control over postsecondary vocational-technical education occurs under Chapter 379. We conclude that the effective date of the transfer of operational control from the Department of Education and the State Board of Education to the new department under RSA 188-F is January 1, 1984.

Before analyzing the specific transition provisions that lead to this conclusion, it is helpful to review the structure of the new department. Chapter 379 provides that the department shall be governed by a board of governors, consisting of 7 members appointed for staggered terms by the



Governor and Council. Section 10 of Chapter 379 provides that the "governor and council may appoint members to the board of governors as of the effective date of this act". Under this provision, appointment of members to the board of governors may be made at any time on or after July 1, 1983.

Chapter 379 also provides for the appointment of a commissioner of the department by the Governor and Council. The commissioner will be appointed for a four-year term and will, with the advice of an administrative board, act as the chief executive officer of the department. The administrative board established pursuant to Chapter 379 will consist of the presidents of each vocational-technical college, the president of the technical institute, and the commissioner.

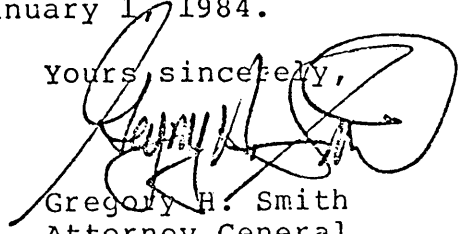
Chapter 379 provides for the appointment of presidents for each vocational technical college and the technical institute by the commissioner, subject to approval by the board of governors. The presidents will perform substantially the same duties as performed by directors of the colleges and the director of the technical institute under RSA 188-A:2-a, but will be unclassified employees. The presidents also have the authority under Chapter 379 to appoint deans, subject to approval by the board of governors and the availability of appropriated funds. Therefore, it is apparent that the new department cannot become operational until the commissioner and the presidents are appointed and assume the powers and duties of their respective positions. Because the appointment of the commissioner and the presidents are contingent upon approval by the board of governors, it is clear that the legislature did not intend for the immediate transfer of administrative and management responsibilities relating to postsecondary vocational-technical education to the new department on July 1, 1983.

A review of the budget for the department of postsecondary vocational-technical education and the transition provisions set out in Chapter 379 confirm the conclusion that the transfer of operational control over postsecondary vocational-technical education and the concurrent repeal of the powers of the State Board of Education and the Department of Education over postsecondary vocational education does not occur on July 1, 1983. Section 7 of Chapter 379 abolishes the existing positions of chief of the division of postsecondary education, director of the technical institute, director of the vocational-technical college, coordinator of instruction, and coordinator of administration as of January 1, 1984. The powers and duties of those positions are transferred to the new department, and the funds appropriated for those abolished positions will be used to pay the salaries for the new

positions from January 1, 1984 to June 30, 1984.¹ Because no funds are budgeted to pay the salaries for the positions of commissioner, president or dean from July 1, 1983 to January 1, 1984, it is logical to conclude that the powers and duties associated with those positions are not transferred to the new department until the funds to pay the salaries of the commissioner and the members of the administrative board become available. Since Chapter 379 requires that the day-to-day operations of the new department be managed by the commissioner, with the assistance of the administrative board, it is clear that operational control over postsecondary vocational-technical education cannot occur until the powers and duties of the abolished positions are transferred to the commissioner and presidents of the colleges and the technical institute on January 1, 1984, when the funds for salaries become available for the positions. The existing positions remain in effect until January 1, 1984 subject to the continuing direction and control of the State Board of Education and the Commissioner of Education as set forth in RSA 188-A.

This interpretation comports with sections 6 and 10 of Chapter 379. Section 6 provides, in part, that "All the appropriate moneys, funds, personnel, property and records of the state board of education or of the department of education relating to the technical institute and the vocational-technical colleges, except as specified in section 7 of this act, are hereby transferred to the department of postsecondary vocational-technical education in accordance with section 10 of this act." Section 10 provides that the transfers under Section 6 "shall be accomplished in orderly stages and shall be completed by January 1, 1984." This section is intended to provide a mechanism whereby organizational transfers can be made before operational control is assumed on January 1, 1984. For these reasons, we conclude that full operational control over postsecondary vocational-technical education should be assumed under RSA 188-F on January 1, 1984.

Yours sincerely,



Gregory H. Smith
Attorney General

GHS/LJL:alh
83-91-I

¹ Legislative Senate Calendar, Finance Committee Report, Amendment to HB 500, pg. 225; Department of Personnel, Permanent Classified Personnel Services, FYS 1984-1985, pg. 85.